

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2011-090177

07/24/2012

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT

M. Kay

Deputy

IN RE THE MARRIAGE OF  
JAMES CASKEY

MICHAEL DAVID MILLER JR.

AND

STEPHANIE CASKEY

ANNETTE COX

ANNETTE T BURNS  
DOCKET-FAMILY COURT-SE  
FAMILY COURT SERVICES-CCC  
JULIE SKAKOON  
7500 E MCDONALD RD. #4004  
SCOTTSDALE AZ 85250

**DECREE OF DISSOLUTION**

An Evidentiary Hearing on the Petition for Dissolution was conducted on April 4, 11 and 12, 2012. The Court has considered the evidence including the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments.

After significant deliberation, the Court makes the following findings and enters the following orders:

**THE COURT FINDS** as follows:

A. At the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.

B. The conciliation provisions of A.R.S. § 25 381.09 have either been met or do not apply.

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C. The parties are Petitioner James Caskey (“Father”) and Respondent Stephanie Caskey (“Mother”). The parties separated permanently on January 20, 2011, and the marital community is deemed to have terminated on February 11, 2011 when the dissolution petition was served.

D. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.

E. There are four (4) minor children, namely: JOSEPH CASKEY, born March 16, 1998; NATALIE CASKEY, born February 8, 2000; KATRINA CASKEY, born December 20, 2001; and ALLEN CASKEY, born October 9, 2004.

F. Mother is not pregnant.

G. This was not a covenant marriage.

H. To the extent that it has jurisdiction to do so, the court has considered, approved and made provision for the maintenance of each spouse and the division of property and debts

**DISSOLUTION OF MARRIAGE**

**IT IS ORDERED** dissolving the marriage of the parties and restoring each party to the status of a single person.

**CUSTODY AND PARENTING TIME**

**Jurisdictional Findings**

**THE COURT FINDS** that the parties and the minor children have resided in Arizona continuously for at least the six months preceding the filing of the petition for dissolution. This Court, therefore, has jurisdiction as Arizona is the “home state” of the minor children. *See* A.R.S. § 25-1031.

**Best Interest Findings: A.R.S. § 25-403**

**THE COURT FINDS** as follows regarding the child’s best interests pursuant to A.R.S. § 25-403:

1. *The wishes of the child's parent or parents as to custody.*

Both parents seek sole custody of all four children.

2. *The wishes of the child as to the custodian.*

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This information is contained in the Conciliation Services interview report. In that interview, Joseph and Katrina said they want to be in the custody of Father and live with him. Father has encouraged this preference, in violation of a court order. Natalie is neutral. Allen, the youngest, expresses confusion.

*3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.*

The Court adopts its finding from the ruling on temporary orders, specifically, that the children were bonded to both parents when the litigation began, that the evidence does not support findings of neglect or endangerment by either parent, and that the greatest threat to the children is what Dr. Yee described as the parents' "poor job of buffering the children from their disputes and conflicts" and their insistence on "depicting [each other] in a negative light."

*4. The child's adjustment to home, school and community.*

Joseph has become involved with the Juvenile Court as a direct result of the turmoil between his parents. He was suspended from school for bringing a weapon to school, and his grades have dropped significantly.

The other children appear to be adjusted adequately in school and in the community.

*5. The mental and physical health of all individuals involved.*

There are no significant issues in this regard.

*6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.*

Mother wrongfully kept the children from Father for a significant period of time after the parties separated. Since the issuance of the temporary orders, however, Mother appears to have avoided interference with Father's relationship with the children. It is safe to say, at least, that there is little evidence of such behavior over the past year or so. Father, by contrast, has continued to engage in alienating behavior. The contempt order is based specifically on conduct that the Court found to have occurred since the temporary orders were put in place.

*7. Whether one parent, both parents, or neither parent has provided primary care of the child.*

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Both parents have provided primary care, though Mother carried more of the burden during the marriage. The Court does not give this factor much weight, however, for the reasons stated in the temporary custody order.

8. *The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.*

This factor does not apply.

9. *Whether a parent has complied with chapter 3, article 5 of title 25, Arizona Revised Statutes.*

The domestic relations education provisions of A.R.S. § 25-352 have been satisfied.

10. *Whether either parent was convicted of an act of false reporting of child abuse or neglect under A.R.S. § 13-2907.02.*

Although neither parent has been so convicted, both made allegations of neglect and abuse at the outset of the litigation that they have now abandoned.

11. *In addition to the foregoing, the Court must also consider any history of domestic violence (A.R.S. § 25-403(E) and 25-403.03), any drug related offenses of either party (A.R.S. § 25-403.04) and any sexual offenses (A.R.S. § 25-403.05).*

There is no history of “significant” domestic violence (A.R.S. § 25-403(E) and 25-403.03), and no drug related offenses (A.R.S. § 25-403.04) or sexual offenses (A.R.S. § 25-403.05).

**THE COURT FURTHER FINDS** as follows regarding the children’s best interests pursuant to A.R.S. § 25-403.01:

1. *The agreement or lack of an agreement by the parents regarding joint custody.*

Both parties request sole custody.

2. *Whether a parent's lack of agreement is unreasonable or is influenced by an issue not related to the best interests of the child.*

The root of the parties’ lack of agreement is their conflict with each other, though Mother’s position was that the parties should have joint custody until she considered the Conciliation Services report of the child interviews.

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*3. The past, present and future abilities of the parents to cooperate in decision-making about the child to the extent required by the order of joint custody.*

In the temporary custody order, the Court observed that the temporary custody period would serve as a “test run” for joint custody. The test has been a failure. The parents have no ability to cooperate at present. The Court’s order that the parents participate in co-parenting counseling appears to have been completely disregarded.

*4. Whether the joint custody arrangement is logistically possible.*

Behavior, not logistics, continues to be the barrier to joint custody in this case.

**Legal Custody and Related Orders**

The Court has concluded that joint custody is not in the children’s best interest at this time because of the toxic conflict between their parents. The Court is in a position of having to choose one or the other.

As between the parents, sole custody with Mother is preferable. Father’s conduct threatens the children’s relationship with Mother. In his testimony, Father did not demonstrate any genuine sense of responsibility for his own behavior. He blamed Mother entirely for Joseph’s struggles. He barely acknowledged that he even did anything wrong. The Court credits Mother’s testimony that Father continues to make destructive and cruel statements to the children, the worst of which has been the one referring to “six Caskey children.”

**THE COURT FINDS** that based on the above, it is in children’s best interest that Mother be awarded sole legal custody of the minor children; JOSEPH CASKEY, born March 16, 1998; NATALIE CASKEY, born February 8, 2000; KATRINA CASKEY, born December 20, 2001; and ALLEN CASKEY, born October 9, 2004..

**IT IS SO ORDERED.**

The Court does not find at this time that unsupervised parenting time with Father “would endanger seriously [the children’s] physical, mental, moral or emotional health.” A.R.S. section 25-411(J). Moreover, cutting the children off from Father could do more harm than good.

**IT IS THEREFORE ORDERED** that Mother’s request for supervision of Father’s parenting time is denied.

**IT IS FURTHER ORDERED** appointing Julie Skakoon as therapeutic intervention clinician for the children. A separate order will issue establishing terms of the appointment.

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**IT IS FURTHER ORDERED** that the therapeutic intervention clinician may make recommendations to the Court to increase, decrease or temporarily suspend parenting time, or to modify the terms of parenting time, as necessary and appropriate to promote the therapeutic reunification process. The clinician is authorized, pursuant to Rule 74(G), to make binding temporary decisions when a time-sensitive situation requires an immediate decision for the welfare of the child.

**Parenting Time**

**IT IS ORDERED** that Mother will be the primary residential parent.

**IT IS FURTHER ORDERED** that Father will be entitled to exercise parenting time as follows:

**Regular Access-** Father will have parenting time on alternating weekends from Friday after school until Monday morning when school begins. He will also have parenting time every Wednesday from after school until 7:00 p.m. Father will be responsible for dropping the children off at Mother's home at the end of his Wednesday parenting time. Drop-off will be curbside in front of Mother's home.

**Summer-** The weekday and weekend schedule described above will apply for all 12 calendar months, except that each parent is entitled to 14 consecutive days of vacation time with the minor children during the summer school break. Each parent is required to notify the other by April 1<sup>st</sup> of the time at which vacation is planned. Mother will have first choice of vacation time in odd-numbered years, and Father will have first choice in even-numbered years, unless the parent with priority does not give timely notice in which event the other parent's plans take priority.

**IT IS FURTHER ORDERED** temporarily suspending the permanent parenting time order *as to Joseph only*. The Court agrees with Mother that decisions about Joseph's parenting time must be made by the adults, not Joseph. At the same time, though, Joseph is an independent actor whose cooperation is required for the success of the parenting plan

**IT IS FURTHER ORDERED** that parenting time for Joseph will be determined by the therapeutic clinician, based on Joseph's therapeutic needs, until further order of the Court.

**Holiday-** The holiday schedule takes priority over the regular time-sharing schedule described above. The checked boxes indicate that the holiday schedule applies and which parent has parenting time on that holiday in a given year. This schedule applies to all four children.

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Holiday		Even-Numbered Years				Odd-Numbered Years			
<input type="checkbox"/>	New Year's Eve	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father
<input type="checkbox"/>	New Year's Day	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father
x	Spring Break	<input type="checkbox"/>	Mother	x	Father	<input type="checkbox"/>	Mother	x	Father
<input type="checkbox"/>	Easter	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father
<input type="checkbox"/>	Fall Break	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father
x	Halloween	<input type="checkbox"/>	Mother	x	Father	x	Mother	<input type="checkbox"/>	Father
<input type="checkbox"/>	Veteran's Day	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father
x	Thanksgiving	x	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>	Mother	x	Father
x	Hanukkah	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father
x	Xmas Eve 9 am to 9 am on Xmas Day	x	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>	Mother	x	Father
x	Xmas Day 9 am to 9 am on Dec. 26	<input type="checkbox"/>	Mother	x	Father	x	Mother	<input type="checkbox"/>	Father
x	Winter Break 1 <sup>st</sup> 1/2	<input type="checkbox"/>	Mother	x	Father	x	Mother	<input type="checkbox"/>	Father
x	Winter Break 2 <sup>d</sup> 1/2	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>	Mother	x	Father
x	Mother's Day will be celebrated with Mother every year.								
x	Father's Day will be celebrated with Father every year.								
<input type="checkbox"/>	Each parent may have the children on that parent's birthday.								
x	Three-day weekends (Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day and Columbus Day) the children will remain in the care of the parent who has the minor children for the weekend.								

**Telephone Contact-** Each parent may have reasonable telephone contact with the minor children during the children's normal waking hours. Father is ordered to remove the block on Joseph's cell phone that has been preventing Mother from calling Joseph.

**Custody Terms**

**Parental Access To Records And Information-** Both parents are entitled to have equal access to documents and other information concerning each child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. A parent who attempts to restrict the release

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of documents or information by the custodian, without a prior court order, is subject to appropriate legal sanctions.

**Educational Arrangements-** Both parents have the right to participate in school conferences, events, and activities (including extra-curricular) regardless of which parent has parenting time at the time of the activity. Both parents have the right to consult with teachers and other school personnel.

**Medical and Dental Arrangements-** Both parents have the right to authorize necessary emergency medical/dental treatment and the right to consult with physicians and other medical practitioners. Both parents shall advise the other parent immediately of any emergency medical/dental care sought for each child. Both parents shall cooperate on health matters pertaining to each child and shall keep one another reasonably informed regarding the status of each child's health. Both parents shall keep each other informed as to names, addresses, and telephone numbers of all medical/dental care practitioners.

**Religious Education Arrangements-** Each parent may take the minor children to a church or place of worship of his or her choice during the time that the minor children is/are in his or her care.

**Parental Communication (General)-** Each parent will promptly inform the other parent of any emergency or other important event that involves a minor child. In furtherance of each child's best interests the parents shall confer and shall consider each other's views. The parents shall communicate to address day-to-day and more significant issues. All communications regarding a minor child shall be between the parents. A parent shall not use a child to convey information or to set up parenting time changes, under any circumstances.

**Parental Communication (Extra Activities)-** Each parent will consult and agree with the other parent regarding any extra activity that affects the other parent's parenting time.

**Parental Communication (Use of E-mail)-** The parents shall use e-mail as their primary method for communication. This method allows the parents to develop their communication and ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and sent so that if an issue arises in the future that has been addressed through e-mail, each party shall have proof as to what was communicated.

**Protection From Conflict-** Each party shall honor the other party's parenting style with the children, provided there is consistency in the rules and expectations for them. Neither party



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shall place the children in the middle of any unresolved problems; and each shall discuss such problems directly with the other parent. The parties shall not present any claim or dispute to the children, or involve the children in litigation in any way except by assuring the children that they will have frequent, meaningful access to both parents. Neither shall make negative, disparaging or derogatory comments or comments or statements about the other party or his/her family in the presence of the children, or engage in any course of conduct whatsoever which is intended to or could reasonably be expected to have the effect of interfering with the other parent's relationship with the children.

**Sex Offender Notification-** Arizona law requires a child's parent or custodian to notify the other parent or custodian immediately if the parent or custodian knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children may have access to the child. The parent or custodian must provide notice by first class mail, return receipt requested or by electronic means to an electronic mail address that the recipient provided to the parent or custodian for notification purposes.

**Relocation-** Neither parent may relocate with the child outside of the Phoenix metropolitan area unless that parent first secures the written consent of the other or secures a court order authorizing the move, except as expressly permitted under A.R.S. section 25-408.

**Mediation Or Conciliation Services-** The parties may participate in mediation through a private mediator or through this Court's Conciliation Services to resolve any disputes, problems or proposed changes regarding child custody, parenting time or any provision of this custody order, before seeking further relief from the Court. While a dispute is being resolved, neither parent shall deviate from this Parenting Plan, or act in such a way that is inconsistent with the terms of this agreement.

**Periodic Review-** The parties shall review and update the terms of the custody and parenting time plan with each other or with the assistance of a private counselor or Conciliation Services mediator, upon written request, at least every four years or whenever a substantial change in circumstances makes changes in the plan necessary.

**Notify Other Parent of Address Change-** Each parent shall inform the other parent of any change of address and/or phone number in advance if possible, and in any event within three days of the change.

**Other Custody Orders; and Contempt Purge**

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**IT IS ORDERED** affirming the appointment of the parenting coordinator, Annette Burns, for an additional twelve months from the date of this Decree on the same terms as under the existing order.

As a purge of the contempt found by the Court on April 12, 2012,

**IT IS ORDERED** that Father shall do the following:

(1) Father shall fully participate in, and shall pay 100% of the cost of, the court-ordered therapeutic intervention and any ancillary behavioral health services (such as individual counseling for Joseph or for himself) directed by the therapeutic intervention clinician as part of the therapeutic intervention process.

(2) Father shall successfully complete, at his own expense, the ten-week parenting effectiveness training conducted by the Parenting Skills Program, (480), 967-6895. Father shall also pay for Mother to participate in that program.

**IT IS FURTHER ORDERED** that Mother shall successfully complete the ten-week parenting effectiveness training conducted by the Parenting Skills Program, (480) 967-6895, the cost to be paid by Father.

**CHILD SUPPORT**

**THE COURT FINDS** that the relevant financial factors and the discretionary allowances and adjustments which the Court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet, filed contemporaneously with this Decree, which the Court hereby incorporates and adopts as its findings with respect to child support.

Father's claim of \$38,500 annual income is not credible. He did not provide the opposing party with records from which the business ledgers could be verified, or account records that would allow tracing of funds. His claimed "expenses" on the ledgers (Exhibits 99 and 100) and Legacy's 2011 tax return (Exhibit 114) include his personal vehicle, expenses of this litigation, and \$26,000 worth of "supplies" over a four-month period. Some of the "supplies" were purchased with American Express cards, on which he charged an average of \$6,000 over a ten-month period. No records were presented to show what was purchased.

Father's position on his income is also inconsistent with his spending patterns. His Affidavit of Financial Information lists \$5,700 per month in personal expenses. By his own report on Exhibit 194, he spent another \$240,000 over 16 months to support Mother and to pay litigation

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expenses. Even after rent and health insurance are backed out to avoid double counting, that spending comes to an average of over \$12,000 per month. Father asks the Court to believe that all that money is borrowed. The Court does not believe that, especially since Father simultaneously claims to have no substantial assets.

At the temporary orders hearing, the Court found that Father earned \$10,950 per month. This was the income stated on the first Affidavit of Financial Information he filed. He claimed in his testimony that he had made a “mistake” and that he really only earned \$6,223 per month. (Now he says he earns half that.) But that income is consistent with his lifestyle and his spending. Since Father has made it almost impossible to determine how much money he really makes, the Court will adopt the prior finding for purposes of the permanent child support order.

In applying these findings under the Arizona Child Support Guidelines,

**THE COURT FURTHER FINDS** that no deviation is appropriate regarding the obligation to pay child support.

**IT IS THEREFORE ORDERED** that Father shall pay to Mother as and for child support the sum of **\$1,389.78** per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing August 1, 2012 by Income Withholding Order.

**LET THE RECORD REFLECT** that an Income Withholding Order is initiated electronically by the above-named Deputy Clerk (confirmation #377398).

**IT IS FURTHER ORDERED** that all payments shall be made through the Support Payment Clearinghouse by Income Withholding Order. At any time an Income Withholding Order is not paying the child support obligation in full, Father shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the “Instructions for Making Support Payments through the Clearinghouse.”

**IT IS FURTHER ORDERED** pursuant to A.R.S. § 25-322, the parties shall submit current address information in writing to the Clerk of the Superior Court and the Support Payment Clearinghouse immediately. Address changes shall be submitted within ten days of the change. Father shall submit the names and addresses of Father’s employers or other payors within ten days. Upon obtaining or changing employment, Father shall submit the name and address of the employer within ten days of the change.

**IT IS FURTHER ORDERED** Father shall provide medical insurance for the benefit of the parties’ minor children, and shall provide an insurance card and claim filing information/forms to the other parent. All medical, dental and orthodontia expenses incurred for

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the health and protection of the children not covered by insurance shall be paid 75% by Father and 25% by Mother.

Unless good cause is shown, any request for payment or reimbursement of uninsured medical, dental, and/or vision costs must be provided to the other parent within 180 days after the date the services occur. The parent responsible for payment or reimbursement must pay his or her share, as ordered by the Court, or make acceptable payment arrangements with the provider or person entitled to reimbursement within 45 days after receipt of the request.

Both parents must use their best efforts to obtain services that are covered by the insurance. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made.

**IT IS FURTHER ORDERED** the children may be claimed as eligible dependents for income tax purposes as follows: Father may claim Joseph, Katrina and Allen each year. Mother may claim Natalie each year.

**IT IS FURTHER ORDERED** if Father is not current in the total Court-ordered child support obligation for the current calendar year and/or any Court-ordered arrearage payment due during the calendar year for which the exemption is to be claimed, Father may not claim the exemption for that year. If Father nevertheless claims one or both children for tax purposes, he shall pay directly to the Support Payment Clearinghouse 100 percent of any and all tax refunds that he receives, which shall be applied first towards Father's current child support obligation, Father's current spousal maintenance obligation, and then towards any arrearage.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503(I), the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

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**IT IS FURTHER ORDERED** that the parties shall exchange income information every 24 months. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

**SPOUSAL MAINTENANCE**

Mother seeks an award of spousal maintenance. In her post-trial filings, she specified that she wants \$500 per month for a period of 36 months. Father opposes any award, asserting that Mother does not qualify for an award of spousal maintenance.

The determination of spousal maintenance is controlled by A.R.S. § 25-319. The threshold question is entitlement, which is controlled by subsection (A) of the statute.

**THE COURT FINDS** that Mother qualifies for an award of spousal maintenance under section 25-319(A)(1) and (2). She lacks sufficient property, including property apportioned to her, to provide for her reasonable needs. She is also unable to be self-sufficient through appropriate employment.

The next step is to determine the amount and duration of spousal maintenance. “The current aim [of spousal maintenance] is to achieve independence for both parties and to require an effort toward independence by the party requesting maintenance.” *Schroeder v. Schroeder*, 161 Ariz. 316, 321, 778 P.2d 1212, 1217 (1989). On the other hand, there is no fixed standard that defines a spouse’s “reasonable needs” and ability to be “self-sufficient” or independent. *See Rainwater v. Rainwater*, 177 Ariz. 500, 869 P.2d 176, 179-80 (App. 1993). Important considerations include the standard of living established during the marriage, and the degree to which the marital standard of living may be seen as a product of the marriage. *See id.* at 180. The point of *Rainwater* is that spousal maintenance is fundamentally a matter of equity.

Noting these underlying principles, the Court must consider all of the statutory factors of A.R.S. § 25-319(B). Those factors, along with this Court’s findings based thereon, are as follows:

1. *The standard of living established during the marriage.*

The parties enjoyed an upper-middle class lifestyle during the marriage.

2. *The duration of the marriage.*

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The marriage was of moderately long duration, more than 15 years at the time of separation.

*3. The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance.*

Mother teaches school, so her ability to increase her income is very limited. She cannot support herself at the marital standard of living without a supplement to her income.

*4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.*

Father is well able to meet his own needs while also paying spousal maintenance to Mother. Although he claims to have extremely heavy debt and very little income, he does not act as though he is worried about money, and he does not appear to have any trouble paying for what he wants. For example, he remarked during his testimony that he rented a home for which he pays a premium price in the winter "to maintain my lifestyle."

*5. The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.*

Father has much greater earning ability than Mother does.

*6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.*

Father started his business during the marriage. In order for the business to become successful, Father necessarily must have put in a lot of time and effort, especially at first. With young children at home, a supportive spouse would have been indispensable to making that happen. Mother also testified that she assisted with Father's business at times during the marriage.

*7. The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.*

This factor is not significant here.

*8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.*

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Father will have much more ability to do this than Mother.

*9. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently.*

Mother will take some income-producing assets away from the marriage, specifically some of the rental properties. She will take less than her fair share, however, as discussed further below.

*10. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.*

There was no evidence that Mother plans to retrain for a different career.

*11. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.*

The Court finds that Father has concealed community assets. Specifically, the Legacy Mortgage and Investment Corp. balance sheet indicates that about \$350,000 in cash was taken out of Legacy in 2010.

Father insisted that he had borrowed this money from his so-called "warehouse line of credit" (an ordinary home equity line of credit, as far as the Court can tell) and in turn loaned it to the company. But Father never provided records to verify his claim, despite repeated disclosure requests by Mother and the business evaluator Frank Pankow. The records he did provide showed that the amount owed on the HELOC on December 31, 2010 -- the date on which Legacy held more than \$360,000 in cash, according to its tax return -- was only \$183,409.02. *See* Exhibit 187. The loans that Father testified about did not happen until two weeks *after* the year-end balance-sheet date. Furthermore, as noted above, Father does not present himself as someone whose business is hanging by a thread; and he does not appear to have the problems obtaining access to capital that one would expect were his business truly in such dire straits. He even testified at his deposition in June 2011 that he had \$150,000 in cash in a safe. The whereabouts of that money remain unknown.

*12. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if*

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*the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.*

This presumably will afford Father a modest savings.

*13. All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim.*

There has been no such conduct.

Based on the above, Mother will be granted her requested spousal maintenance award of \$500 per month for 36 months, and an additional award of \$1,000 per month for 72 months reflecting what the Court finds Mother should have received in the division of property. The calculation by which the Court arrived at this amount is set out below in the section of the Decree concerning equalization of the property division.

**THE COURT FINDS** that Mother is entitled to an award of spousal maintenance in the amount of \$1,500 per month for a term of 36 months, and \$1,000 per month for an additional 36 months.

**THE COURT FURTHER FINDS** that Father is capable of paying spousal maintenance in these amounts.

**IT IS THEREFORE ORDERED** that effective as of August 1, 2012, Father shall pay Mother spousal maintenance in the amount of \$1,500 per month for a term of 36 months, and \$1,000 per month for an additional 36 months.

The payments of \$1,000 per month for 72 months represent an equitable re-allocation of marital assets. That portion of the spousal maintenance award shall therefore be non-modifiable. The spousal maintenance award shall terminate upon the death or remarriage of Mother.

The spousal maintenance payments shall be made through the Support Clearinghouse. An automatic Income Withholding Order is issued. Until it becomes effective, Father shall be responsible for ensuring that the payment is made through the Support Clearinghouse in a timely fashion.

**DIVISION OF PROPERTY AND DEBTS**

The Court shall divide community property equitably, although not necessarily in kind, without any regard to marital misconduct. A.R.S. § 25-318(A). As a general presumption,



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equitable division requires that community property be divided substantially equally. *See Toth v. Toth*, 190 Ariz. 218, 221, 946 P.2d 900, 903 (1997). However, the court may order an unequal division of community property in consideration of excessive or abnormal expenditures or the destruction, concealment, or fraudulent disposition of property. A.R.S. § 25-318(C).

Only rarely is unequal division of community property appropriate to achieve equity. *See Toth*, 190 Ariz. at 221, 946 P.2d at 903 (unequal division of property was appropriate because one spouse contributed substantially disproportionate separate funds compared to the other's contribution); *see also Flower v. Flower*, 223 Ariz. 531, 531, 225 P.3d 588, 588 (Ct. App. 2010) (unequal division of property was appropriate because the parties incurred substantial community debt to benefit one spouse's separate property). *But see Inboden v. Inboden*, 223 Ariz. 542, 547, 225 P.3d 599, 604 (Ct. App. 2010) (vacating an order for the unequal division of property because each spouse had contributed separate funds to joint property).

The Court shall consider all equitable factors before ordering an unequal division of community property, including: the length of the marriage, the contributions of each spouse to the community, the source of funds used to acquire the property to be divided, the allocation of debt, and any other factor that may affect the outcome. *See Inboden*, 223 Ariz. at 547, 225 P.3d at 604.

**THE COURT FINDS** as follows:

The marital community owns a house at 801 W. Tyson Street, Chandler, Arizona as community real property. Mr. Caskey, to whom the parties agree the home should be awarded, testified that the value of the property is \$270,000. The property secures the "warehouse loan" (home equity line of credit), on which \$493,000 was owed on the date of service of the Petition. Mr. Caskey is personally liable for this debt.

The negative equity resulting from the difference between the value of the home and the amount of the HELOC (about \$225,000) is presumed to be a community obligation because it was incurred before service of the petition. *See, e.g., Cardinal & Stachel, P.C. v. Curtiss*, 225 Ariz. 381, 238 P.2d 649, para. 6 (App. 2010). A significant portion of the funds were spent for the benefit of Mother or the community during the *pendente lite* period. Based on the spreadsheet prepared by Mr. Caskey and the parties' testimony, the total amount expended for the benefit of Ms. Caskey is \$21,375 (home expenses including mortgage, from which she benefitted because she lived in the home) plus \$20,225 (credit card expenditures) plus \$12,500 (out of \$20,000 given to her at the time of the separation, a portion of which Father eventually took back) plus \$29,4010 (the money that Mother took from the Legacy account), a total of \$83,511. Additional amounts were spent on health insurance and on shared litigation costs

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(Pankow and Yee). This debt therefore will be treated as a community obligation in the property equalization.

The marital community also owns the business known as Legacy Mortgage and Investment Corp., the successor to which is Legacy Lending USA. The value of this business, arrived at by the book value method, was at least the amount of cash in the business unless there was an offsetting liability. As discussed above, a preponderance of the evidence does not show the existence of an offsetting liability. An equitable valuation of the business for dissolution purposes is therefore \$362,778, the amount of cash in the business at year-end 2010.

The marital community also owns Realty Homes, L.L.C. and Hawkeye Capital Holdings, L.L.C., the assets of which consist of rental properties in Iowa (Realty Homes) and Arizona (Hawkeye). Mr. Pankow testified that the value of these entities was equal to the value of the property they held. The individual properties, their book values (based on cost minus depreciation as set forth in Exhibit 41) and the amounts of the encumbrances against each are:

<u>Arizona Properties</u>	<u>Value</u>	<u>Encumbrance</u>
787 W. Erie St., Chandler, AZ	\$ 99,424	\$94,722
415 N. Central St., Chandler, AZ	\$129,459	\$74,524
375 N. Evergreen St., Chandler, AZ	\$ 40,740	0
383 N. Evergreen St., Chandler, AZ	\$104,088	0
385 N. Evergreen St., Chandler, AZ	\$ 65,957	0
395 N. Evergreen St., Chandler, AZ	\$ 59,019	\$98,900
<u>Iowa Properties</u>	<u>Value</u>	<u>Encumbrance</u>
701 Haskell St., Akron, IA	\$ 70,279	\$62,896
H 330 N. 8 <sup>th</sup> St., Akron, IA	\$ 80,006	\$71,503
420 N. 8 <sup>th</sup> St., Akron, IA	\$ 72,268	0

Each party accuses the other of taking rents from community-owned rental properties for which the accusing party was paying the mortgage. Mother claims to have lost about \$15,000 this way. Father claims to be out a bit less, about \$11,500, but he may also have benefitted from positive cash flow during the period in 2011 when he was both paying mortgages and collecting rents. These competing claims therefore more or less offset.

Each party makes various additional claims that the other wasted or misappropriated community assets during the *pendente lite* period. The only instance on which the evidence is clear is the \$9,800 in federal and state income tax refunds that Father took from the joint

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account. No others were proven sufficiently to warrant adjusting for them in the final division of property. The transactions that appear to have involved the money borrowed on the HELOC (such as the \$80,000 that flowed through Hawkeye to Legacy) will be accounted for by the division of the debt.

Mother has an Arizona State Retirement System (ASRS) retirement account earned in the course of her employment earned during the marriage. There is no evidence of the value of this asset. The parties have agreed that it should be awarded to Mother.

Other significant community assets include an undeveloped lot in Show Low, Arizona (Lot 130, Eagle View Estates), purchased in 2001 for \$24,500 and unsold for an asking price of \$69,000 so probably worth more like \$40,000 to \$50,000; a timeshare at Playa Grande, Cabo San Lucas, Mexico purchased in 2006 for \$19,500 but now worth \$5,000; a GMC Yukon vehicle worth \$48,000 if in "excellent" condition but probably more realistically like \$40,000 to \$45,000; a 2008 GMC Sierra pickup truck with a value of \$18,000; and a 2006 Sea Ray 24 foot boat worth between \$35,000 (per Father) and \$40,000 (per Mother). All of this property is owned free and clear.

With respect to the rest of the community personal property, Father's counsel got Mother to agree during her testimony that each party would simply retain the property in his or her possession. The parties' respective forms of decree, however, differ as to whether that means the furniture in the marital home will go to Mother (who lives there now) or to Father (who will be moving back soon). So the Court is back where it started.

There are apparently no community debts other than the home equity line of credit and the debts secured by the rental properties.

Based on these findings of facts,

**IT IS ORDERED** James Caskey shall be awarded as his sole and separate property, subject to any encumbrances thereon, the following:

1. The residence at 801 W. Tyson St., Chandler, AZ, subject to the home equity line of credit (referred to at trial as the "warehouse line of credit").
2. The business known as Legacy Lending, USA, together with any assets or liabilities associated therewith.
3. The business entities known as Pinnacle Home Loans, Inc., Realty Homes, LLC, and Hawkeye Capital Holdings, LLC, but not the property and other assets held by these entities, which is being awarded separately in this Decree.

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4. The rental property located at 415 N. Central St, Chandler, AZ. Mr. Caskey shall refinance the obligation associated with this property to remove Ms. Caskey's name from the obligation, within 90 days of the date of this Decree.
5. The rental property located at 787 W. Erie St., Chandler, AZ.
6. The rental property located at 383 N. Evergreen St., Chandler, AZ.
7. The rental property located at 701 Haskell St., Akron, IA.
8. The rental property located at 330 N. 8<sup>th</sup> St., Akron, IA.
9. The 2008 GMC Sierra pickup truck.
10. The 2006 Sea Ray 24 foot boat.
11. The timeshare at Playa Grande, Cabo San Lucas, Mexico.
12. All financial and/or bank accounts in his name.
13. All of his clothing, jewelry and items of personal adornment, and items of a personal nature; all items owned by that party prior to marriage; and all items received as gifts from any person including the other party.

**IT IS FURTHER ORDERED** Stephanie Caskey shall be awarded as her sole and separate property, subject to any encumbrances thereon, the following:

1. The rental property located at 375 N. Evergreen St., Chandler, AZ.
2. The rental property located at 385 N. Evergreen St., Chandler, AZ.
3. The rental property located at 395 N. Evergreen St., Chandler, AZ.
4. The rental property located at 420 N. 8<sup>th</sup> St., Akron, IA.
5. The undeveloped lot in Show Low, Arizona (Lot 130, Eagle View Estates).
6. The GMC Yukon vehicle.
7. The ASRS retirement account.
8. All financial and/or bank accounts in her name.
9. All of her clothing, jewelry and items of personal adornment, and items of a personal nature; all items owned by that party prior to marriage; and all items received as gifts from any person including the other party.

**IT IS FURTHER ORDERED** that Ms. Caskey shall vacate the residence at 801 W. Tyson St., Chandler, AZ within 120 days of the date of this Decree.

With respect to the division of the remaining personal property,

**IT IS FURTHER ORDERED** that Mother shall create a list of the personal property not otherwise addressed in this Decree (specifically including but not limited to the furniture, furnishings and household goods in the marital residence at 801 W. Tyson St., Chandler, AZ). Father shall be given the opportunity to review the list and to add to it or revise it as necessary. The parties shall flip a coin to determine who gets first choice. The parties then shall alternate

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choosing from the jointly-created list until all property has been divided. If the parties are unable to cooperate to the extent necessary to complete this process, they shall choose a person acceptable to both of them to oversee the process, including by entering the residence and making an inventory of the property if necessary. No money shall be owed by either party to the other as a result of any inequality of the value of the personal property divided by this method.

**IT IS FURTHER ORDERED** that the division of property shall be completed on or before September 1, 2012.

**IT IS FURTHER ORDERED as follows:**

- Each party shall be solely responsible for payment of any debt secured by property awarded to that party in this Decree, specifically including but not limited to the HELOC secured by the former marital residence and the loans secured by the respective rental properties.
- Each party shall indemnify the other and hold the other harmless from any and all debts designated as the responsibility of that party in this Decree.
- Each party shall execute such documents as are necessary to effect the transfer of any property or interest in property pursuant to this Decree.
- Any community debts that were not identified at the time of the trial shall be divided equally between the parties.
- Each party shall be solely responsible for any credit card charge or other debt incurred by him or her after the date of service of the Petition.

**Equalization**

Aside from the Legacy entity and the HELOC debt, each spouse is receiving property of roughly equal value. The value of Legacy and the HELOC debt therefore must be equalized by subtracting Ms. Caskey's share of the HELOC debt ( $\$493,000 - \$270,000 / 2 = \$111,500$ ) from her share of value attributed to Legacy ( $\$362,778 / 2 = 181,389$ ). The result is approximately \$69,000. Dividing this amount into 72 monthly payments (and attributing a little time value to the money), Ms. Caskey will be awarded \$1,000 per month of spousal maintenance in addition to what she has requested.

No offset will be ordered for the tax refund because Father is relinquishing his interest in Mother's retirement account.

**THE COURT FINDS** that this allocation of the real and personal property, when considered with the division of debt and the award of spousal maintenance, is fair and equitable under the circumstances.

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**RESTORATION OF NAME**

Mother, Stephanie Caskey, asks on the record to have her name restored.

**IT IS THEREFORE ORDERED** restoring Stephanie Caskey to her former name, Stephanie Battani.

**IT IS FURTHER ORDERED** directing Docket to **change** the caption in iCIS to reflect Respondent's restored name as Stephanie Battani.

**ATTORNEY FEES AND COSTS**

Mother has requested an award of attorney fees and costs. Having considered the financial resources of both parties and the reasonableness of the positions taken by the parties, as required by A.R.S. section 25-324(A),

**THE COURT FINDS** that there is a substantial disparity of financial resources between the parties. Because of the disparity, Father has considerably more resources than Mother available to contribute toward attorney fees and costs.

**THE COURT FURTHER FINDS** that Father acted unreasonably in the litigation, specifically by stonewalling Mother's attempts to determine his income and Mr. Pankow's effort to place a value on his business. His conduct made the litigation more protracted and expensive than it needed to be.

**IT IS THEREFORE ORDERED** granting Mother's request for attorney fees and costs. Father will be required to pay a portion of Mother's reasonable attorney fees and costs.

**IT IS FURTHER ORDERED** that, not later than August 17, 2012, counsel for Mother shall submit all necessary and appropriate documentation to support an application for an award of attorney fees and costs, including a *China Doll* Affidavit and a form of order. Counsel shall also disclose what payments have been made toward the fee obligation, and the source of the funds used to make the payments, so that Father does not wind up paying the same fees twice.

**IT IS FURTHER ORDERED** that Father may file written objections not later than August 27, 2012. The Court shall determine the award and enter judgment upon review of the Affidavit as well as any objections.

**IT IS FURTHER ORDERED** denying any affirmative relief sought before the date of this Order that is not expressly granted above.

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**IT IS FURTHER ORDERED** signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

July 24, 2012  
Date

/ s / HONORABLE JOHN R. HANNAH JR

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JUDICIAL OFFICER OF THE SUPERIOR COURT